KEERL *v.* STATE OF MONTANA.

ERROR TO THE SUPREME COURT OF THE STATE OF MONTANA.

No. 113. Argued March 15, 1909.—Decided April 5, 1909.

Where the accused during the trial specifically claims that the action of the state court in denying his plea of once in jeopardy operated to deprive him of his liberty without due process of law contrary to the Fourteenth Amendment, this court has jurisdiction under § 709, Rev. Stat., to review the judgment.

Where a state court has the right to discharge the jury if it satisfactorily appear after a reasonable time that a disagreement is probable, and the state court so finds after the jury has been out for twenty-four hours, and discharges the jury, the result is a mistrial and the accused cannot on a subsequent trial interpose the plea of once in jeopardy by reason thereof, *United States* v. *Perez*, 9 Wheat. 579; and so *held* in regard to a trial in Montana where the jury had been discharged under § 2125, Penal Code of that State.

Quære, and not decided, whether the due process provision of the Fourteenth Amendment in itself forbids a State from putting one of its citizens in second jeopardy.

33 Montana, 501, affirmed.

On April 24, 1902, an information was filed in the District